Supreme Court of the United States.

No. 56.—October Term, 1902.

Gertrude H. Hardin and The Cook County Canal and Dock Company, Plaintiffs in Error,
vs.
Charles B. Shedd.

In error to the Supreme Court of the State of Illinois.

[May 18, 1903.]

Mr. Justice Holmes delivered the opinion of the Court.

This is a proceeding under the Burnt Records Act of the State of Illinois, by which the defendant in error, Shedd, seeks to establish his record title to certain land adjoining and under a non-navigable lake called Wolf Lake, lying partly in Illinois and partly in Indiana. The plaintiff in error, Hardin, also owns land adjoining the same lake, by succession to a title under patents from the United States, and under these patents makes claims to land now or originally under the lake, which conflict with the claim of Shedd and with the decree of the court. The other plaintiff in error is a grantee of Hardin. The decree having been affirmed by the Supreme Court of the State, 177 Ill. 123; *S. C.*, 161 Ill. 462, the case is brought here by writ of error. *Mitchell* v. *Smale*, 140 U. S. 406, 410. *Shively* v. *Bowlby*, 152 U. S. 1, 9, 10. It seems unnecessary to go into details of the difference, as the main question here goes to the foundation of Hardin's case, and we are against her on that. Her title and a plan of the territory in which lies the disputed land will be found set out in *Hardin* v. *Jordan*, 140 U. S. 371.

The claim of the plaintiffs in error to the land below the original water line depends on its having passed by the patent of the United States. The patent to Holbrook, from which they derive an important part of their title, was dated May 20, 1841, long before the Swamp-Land Act. At that time the land under the lake, as well as that surrounding it, belonged to the United States, and if grants of the United States should be construed without regard to State laws, it may be assumed that, subject to all questions of the proper adjustment of lines, Hardin would have prevailed. When land is conveyed by the United States bounded on a non-navigable lake belonging to it, the grounds for the decision must be quite different from the considerations affecting a conveyance of land bounded on navigable water. In the latter case the land under the water does not belong to the United States, but has passed to the

State by its admission to the Union. Nevertheless it has become established almost without argument that in the former case as in the latter the effect of the grant on the title to adjoining submerged land will be determined by the law of the State where the land lies. In the case of land bounded on a non-navigable lake the United States assumes the position of a private owner subject to the general law of the State, so far as its conveyances are concerned. *Hardin* v. *Jordan*, 140 U. S. 371; *Shively* v. *Bowlby*, 152 U. S. 1, 45; *Grand Rapids & Indiana R. R. Co.* v. *Butler*, 159 U. S. 87, 90, 93; *St. Anthony Falls Water Power Co.* v. *St. Paul Water Commissioners*, 168 U. S. 349, 363. (Such cases are not affected by Rev. Stat., §§ 2476, 5251.) When land under navigable water passes to the riparian proprietor, along with the grant of the shore by the United States, it does not pass by force of the grant alone, because the United States does not own it, but it passes by force of the declaration of the State which does own it that it is attached to the shore. The rule as to conveyances bounded on non-navigable lakes does not mean that the land under such water also passed to the State on its admission or otherwise, apart from the Swamp-Land Act, but is simply a convenient, possibly the most convenient, way of determining the effect of a grant. We are particular in calling attention to this difference, because we fear that there has been some misapprehension with regard to the point.

The law of Illinois has been settled since *Hardin* v. *Jordan*, 140 U. S. 371, and it now is clear, by the decision in this case and later, that conveyances of the upland do not carry adjoining land below the water line. *Fuller* v. *Shedd*, 161 Ill. 462; *Hardin* v. *Shedd*, 177 Ill. 123; *Hammond* v. *Shepard*, 186 Ill. 235. Following these decisions, we must hold that the title set up by the plaintiffs in error fails. Even accepting the principles of the common law, it may be a question whether one consideration in this case was not overlooked in *Hardin* v. *Jordan*. It was noted that the conveyance was by reference to the official plat. The plat of the Illinois portion, unlike that of the part in Indiana, described the lake as a "navigable lake." It is true that this was a mistake, but it might be urged that the description must be taken to have the same effect as if it were true when we are determining the effect of a conveyance adopting it. It would seem that if a conveyance of land bounded by navigable water would not pass land below the water line, a conveyance purporting to bound the land by navigable water does not purport to pass land below the water line. The common law as understood by this court and the local law of Illinois with regard to grants bounded by navigable water are the same. *Shiveley* v. *Bowlby*, 152 U. S. 1, 43, 47, 51; *Seaman* v. *Smith*, 24 Ill. 521.

Of course, it would result from the Illinois ruling that the survey of the submerged land in 1874, referred to in *Hardin* v. *Jordan*, and the con-

veyances in pursuance of it, may have been good on the Illinois side of the State line, unless the State had got a title before that date under the Swamp-Land Act. Whether it did so or not, it is unnecessary to consider in this case.

The land which Shedd gets under the decree of the State court he gets, not in derogation of the foregoing principles, but on findings of fact as to what land was above water at the date of the patents from the United States, 161 Ill. 469, 470, and as to accretions to that land by the gradual drying up of the water at a later date. 161 Ill. 473, 494. We perceive no need for considering the decree in detail.

Decree affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.

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[May 18, 1903.]

Mr. Justice White, with whom concurs Mr. Justice McKenna, dissenting.

This case, in some aspects, involves contentions supposed to have been finally decided by this court in *Hardin* v. *Jordan*, (140 U. S. 371,) and *Mitchell* v. *Smale*, (140 U. S. 406.) In those cases there was a controversy between persons holding the patents of the United States to fractional lots abutting on the meander line of Wolf Lake in Illinois and those holding the patents of the United States subsequently issued to the bed of the lake. The latter patents were based upon a survey made of the bed, approved after contest in the Land Department. It was held in the cases referred to that the rights of the claimants to the bed of the lake were to be determined by the local law of Illinois. Ascertaining what the local law was, it was decided that the abutting lot owners took to the center of the lake, and hence the subsequent patents to the bed were void.

The controversy presented by this record originated from comflicting claims made in two suits, (subsequently consolidated) to the bed of Wolf Lake, between Mrs. Hardin (who was the plaintiff in *Hardin* v. *Jordan*) and one of her grantees, as owners of the border lots, Shedd, (grantee of Mitchell, the plaintiff in *Mitchell* v. *Smale*,) also as an owner of border lots, and various claimants under patents of the United States based upon the survey of the bed of the lake. Although the judgment below was against the second patentees, they have not prosecuted error. The Supreme Court of Illinois declined to apply the rule laid down by this court because it held that this conrt had in *Hardin* v. *Jordan* and *Mitchell* v. *Smale* misconceived the State law. By the local law it was held that the lot owners by the conveyance to them of lots abutting on the meander line took no title whatever to the bed of the lake. It was, however, decided that the effect of the conveyance by the United States to private persons of the border lots was to transfer the title of the bed of tho lake to the State of Illinois. The doctrine of the Supreme Court of Illinois on the subject is

not only shown in the opinion of that court in this case (*Fuller* v. *Shedd*, 161 Ill. 462,) but also in the subsequent case of *Hammond* v. *Shepard*, (186 Ill. 235.) In the first case (*Fuller* v. *Shedd*,) after expressly deciding that the State of Illinois did not acquire title to the bed of the lake under the swamp land act, the court declined to hold "that the grant to the riparian owner conveys the bed of a non-navigable (meander) lake, and makes its waters mere private waters;" and, further, said that, "so long as such meander lakes exist, over their waters and bed, when covered with water, the State exercised control, and holds the same in trust for all the people who alike have benefit thereof, in fishing, boating and the like." In the second case (*Hammond* v. *Shepard*) the Supreme Court of Illinois said (p. 241):

"The law of this State, as repeatedly announced, is that shore owners on meandered lakes, whether navigable or non-navigable, take title only to the water's edge, the bed of the lake being in the State.

* * * * * *

"No shore owner can take away from the State its title to the former bed of the lake unless he can establish by proof that the dry land was formed by the water receding from his shore line."

Under the doctrine thus stated, having treated the bed of the lake as the property of the State, the court determined the rights of the parties by reference to principles of accretion which it deemed applicable to the property in the bed of the lake owned by the State. Now, in *Kean* v. *Calumet Canal & Improvement Company*, quite recently decided by this court, the doctrine announced in *Hardin* v. *Jordan* was re-examined, and it was in effect held that that case, whilst recognizing that the ownership of the beds of non-navigable lakes on the public domain was in the United States, simply decided that when the United States sold lots bordering on such a lake the question whether or not the bed of the lake passed by the grant of the border lots was to be determined by the principles of conveyancing in force under the local law of the State where the lake was situated. Now, as the settled rule in Illinois is that under the principles of conveyancing prevailing in that State no title to the bed of a lake passes to the patentees of the United States by the sale of border lots, I do not perceive how the United States has been divested of its title to the bed of Wolf Lake. To say that, although on the principles of conveyancing under the local law, the bed did not pass, nevertheless, because the United States sold the border lots, the State of Illinois thereby became the owner of the bed of the lake, is, as I understand it, to declare that it is in the power of the State of Illinois to appropriate the property of the United States.

The suggestion that the considerations just stated are immaterial, because, even although by the local law, the United States did not convey to

the patentees of the border lots title to the bed of the lake, it may have parted with its title to the bed by the swamp lands act, involves a departure from the settled construction of the swamp lands act to which attention was called in the dissent in *Kean* v. *Calumet Canal & Improvement Company.* Besides the disturbance of vested rights to which it seems to me such a suggestion must give rise, it must be remembered that it is directly in conflict with the opinion of the Supreme Court of Illinois in this very case, where it was expressly declared that the State did not take title to the bed of Wolf Lake under the swamp lands act, because as a matter of fact the converse had been explicitly decided by the Secretary of the Interior in a contest before the Land Department to which the State of Illinois was a party. The result of the suggestion as to the swamp lands act then, as I see it, is to cause the State of Illinois to become the owner of the bed of the lake under the swamp lands act, in derogation of the act of Congress, contrary to the rulings of this court and of the Supreme Court of the State, and in disregard of the express findings of fact made by the Secretary of the Interior when he approved the second survey, and also when he rendered the decision on the contest to which the State of Illinois was a party.

I fail to perceive if, as a matter of conveyancing under the local law, the title to the bed of the lake did not pass with the sale of the border lots, how the United States has lost its title. If it be conceded that the view of the local law, announced by this court in *Hardin* v. *Jordan,* was a mistaken one, and that the local law must be taken to be what the lower court held it to be in this case, then it seems to me the only foundation upon which the title of the United States to the bed of the lake can be disputed has disappeared, since in my opinion the theory of accretion which the court below applied cannot be sustained either by reason or authority. I content myself with merely stating this view, which involves the merits, and do not elaborate, because, in my opinion, if it be—as the court now decides—that the question whether the title of the United States to the bed of Wolf Lake passed to the State of Illinois is to be determined solely by the local law of Illinois, as construed by the courts of that State, I do not perceive how a Federal question arises on this record, since I find it impossible to think that there can be a Federal question depending exclusively for its solution upon non-Federal or State law.

I am authorized to say that Mr. Justice McKenna concurs in this dissent.